

STATE OF MICHIGAN
COURT OF APPEALS

KHALIL RASHAD MUHAMMAD,

Plaintiff-Appellant,

v

EVERBANK,

Defendant-Appellee.

UNPUBLISHED

May 17, 2011

No. 296239

Wayne Circuit Court

LC No. 09-018048-CH

Before: CAVANAGH, P.J., and TALBOT and STEPHENS, JJ.

PER CURIAM.

In this action to quiet title, Khalil Rashad Muhammad challenges the trial court's grant of summary disposition in favor of Everbank, based on the trial court's determination that Muhammad was not a bona fide purchaser. We affirm.

We review de novo a trial court's decision to quiet title and to grant summary disposition.¹ Summary disposition is appropriately granted if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.²

Muhammad received a quit claim deed for the subject property from Oxala Holdings International, L.L.C. ("Oxala") on May 20, 2009, which was recorded on May 21, 2009. Oxala also provided Muhammad with a warranty deed for the same property on June 3, 2009, which was subsequently recorded on July 14, 2009. One year earlier, on May 19, 2008, Everbank received and recorded a sheriff's deed for this property.

It is the duty of a purchaser of real estate to investigate the seller's title,

¹ *Special Prop VI v Woodruff*, 273 Mich App 586, 590; 730 NW2d 753 (2007).

² MCR 2.116(C)(10).

and to take notice of any adverse rights or equities of third persons which he has the means of discovering, and as to which he is put on inquiry. If he makes all the inquiry which due diligence requires, and still fails to discover the outstanding right, he is excused, but, if he fails to use due diligence, he is chargeable, as a matter of law, with notice of the facts which the inquiry would have disclosed.³

A bona fide or “good faith purchaser is one who purchases without notice of a defect in the vendor's title. Notice can be actual or constructive.”⁴ Notice has been defined as:

When a person has knowledge of such facts as would lead any honest man, using ordinary caution, to make further inquiries concerning the possible rights of another in real estate, and fails to make them, he is chargeable with notice of what such inquiries and the exercise of ordinary caution would have disclosed.⁵

Had a title search been conducted, it would have disclosed the absence of documents in the chain of title granting an interest in the property to Oxala. Such blatant discrepancies in the chain of title would have placed a bona fide purchaser on notice of the necessity to make further inquiries regarding the existence of claims or rights of third parties to the property. As a result, Everbank’s interest in the property is superior to any ownership interest alleged by Oxala. “Michigan is a race-notice state, and owners of interests in land can protect their interests by properly recording those interests.”⁶ “[T]he holder of a real estate interest who first records his or her interest generally has priority over subsequent purchasers.”⁷ Although the deed granting an interest to Oxala was executed before Everbank recorded its sheriff’s deed, Oxala’s failure to record its deed results in Everbank being able to assert a priority interest.⁸

Because Muhammad is charged with notice of Everbank’s earlier recorded interest and

³ *American Fed S & L Ass’n v Orenstein*, 81 Mich App 249, 252; 265 NW2d 111 (1978).

⁴ *Johnson Family Ltd Partnership v White Pine Wireless, LLC*, 281 Mich App 364, 393; 761 NW2d 353 (2008).

⁵ *Richards v Tibaldi*, 272 Mich App 522, 539; 726 NW2d 770 (2006), quoting *Kastle v Clemons*, 330 Mich 28, 31; 46 NW2d 450 (1951).

⁶ *Richards*, 272 Mich App at 539, quoting *Lakeside Assoc v Toski Sands*, 131 Mich App 292, 298; 346 NW2d 92 (1983).

⁷ *Richards*, 272 Mich App at 539, citing MCL 565.29.

⁸ MCL 565.29.

the absence of documents within the chain of title granting any interest to Oxala in the property, the trial court properly determined that he is not entitled to the status of a bona fide purchaser.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Michael J. Talbot

/s/ Cynthia Diane Stephens